

## **REMARKS**

### **Summary of the Official Action**

The foregoing Amendment and Remarks that follow are responsive to the Official Action mailed December 17, 2004. In that Office Action, the Examiner objected to the Abstract indicating that the recitation in lines 6-10 is not appropriate content/language for the Abstract. In addition, the Examiner objected to Claim 18 because of an informality. Furthermore, the Examiner rejected Claims 1, 3-6, and 8-9 under 35 U.S.C. §102(e) as being anticipated by Straka (U.S. Patent No. 4,935,638). Also, the Examiner rejected Claims 1-5 and 9 under 35 U.S.C. §102(e) as being anticipated by Elrod (U.S. Patent Application No. 2003/0178805).

The Examiner also rejected Claims 10-13 under 35 U.S.C. §102(e) as being anticipated by the Elrod reference. Furthermore, the Examiner rejected Claims 14-17 under 35 U.S.C. §102(e) as being anticipated by the Elrod reference or, in the alternative, under 35 U.S.C. §103(a) as being obvious over the Elrod reference. The Examiner indicated that Claim 7, although objected as being dependent upon a rejected base claim, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Summary of Applicants Response**

By this Amendment, Applicant has amended Claims 1, 7, 10, 14 and 18. In addition, Applicant has cancelled Claims 2 and Claims 18-20. Furthermore, Applicant has added new Claims 21-25. The proposed amendments are not believed to add new matter or necessitate further searching.

### **Objection to the Abstract**

*The Examiner objected to the Abstract indicating that the recitation in lines 6-10 was not appropriate content/language for the Abstract.*

By this amendment, Applicant has submitted a replacement Abstract paragraph in order to address the Examiner's objections. More specifically, the recitation in lines 6-10 of the Abstract has been deleted. Therefore, the objection to the Abstract is believed to be overcome.

### **Objection to Claim 18**

*The Examiner objected to Claim 18 indicating that the claim ended inappropriately with a semicolon rather than a period.*

By this Amendment, Applicant has deleted Claim 18 such that the objection thereto in the Office Action is now moot.

### **Rejection of Claims 1, 3-6 and 8-9 Under 35 U.S.C. §102(e)**

*The Examiner rejected Claim 1 under 35 U.S.C. §102(e) as being anticipated by Straka.*

In the Office Action, the Examiner indicates that “Straka discloses a vehicle step comprising: (re: Claim 1) a first elongate member (11) including a first coupling section (13) and a second elongate member (12) including a second coupling section (14); and wherein the first coupling section and the second coupling section are fixedly attached (as shown in Figure 1 and Figure 3).” (Office Action, Page 3).

While Applicant agrees with the Examiner that Straka discloses the first and second elongate members which are fixedly attached together, Applicant respectfully submits that Straka fails to show or disclose that each of the first and second elongate members have a tube disposed in radially spaced relation with the first elongate member and with the second elongate member. More specifically, Applicant submits that Straka fails to disclose that the first elongate member has a male element comprising a tube disposed in radially spaced relation to the first elongate member and which is attached to the first elongate member, as is recited in amended Claim 1. Likewise, Applicant submits that Straka fails to show or disclose the second elongate member having a female element comprising a tube disposed in radially spaced relation to the second elongate member and which is attached to the second elongate member as is also recited in Amended Claim 1.

Contrary to the arrangement of Applicant’s invention, Straka is understood by Applicant to only show and disclose an internal connecting rod 60 which is “of appropriate diameter to fit inside of the tubular half bars” (elements 11 and 12). (Figure 2; Column 4, Lines 21-24). In the Office Action, the Examiner indicates that the tube is the structural equivalent of the female element 55 as shown in Figure 3 of the application. However, Straka is not understood by Applicant to show or disclose the structural or functional equivalent of the male element which comprises a tube

which may be disposed in radially spaced relation to the first elongate member. As shown in Figure 2 of Straka, the first elongate member is understood to be equivalent to the tube member 11. None of the figures of Straka illustrate a male element which is insertable into the internal connecting rod 60 (the structural equivalent of the female element). Furthermore, Straka is silent as to any disclosure that may teach, suggest or even imply that the first elongate member includes a male element which comprises a tube that may be inserted into the female element.

Therefore, Applicant submits that Straka fails to teach each and every one of the elements recited in amended Claim 1 of the application. Therefore, Applicant submits that amended Claim 1 is now patentable over Straka. The claims depending from Claim 1, namely Claims 3-6 and 8-9 (which were also rejected under 35 U.S.C. §102(e)), are also believed to be allowable as they are further limitations of amended Claim 1.

#### **Rejection of Claims 1-5 and 9 Under 35 U.S.C. §102(e)**

*Claims 1-5 and 9 were rejected under 35 U.S.C. §102(e) as being anticipated by Elrod.*

In the Office Action, the Examiner indicates that “Elrod discloses a vehicle step comprising: (re: Claim 1) a first elongate member including a first coupling section and a second elongate member including a second coupling section; and wherein the first coupling section and the second coupling section are fixedly attached.” (Office Action, Page 4). While Applicant agrees with the Examiner that Elrod discloses a first and second elongate members being fixedly attached together, Applicant submits that Elrod fails to disclose the emphasized features of Applicant’s invention as recited in amended Claim 1. More specifically, as was described above regarding the rejection of Claim 1 under §102(e) in view of Straka, Applicant submits that Elrod fails to disclose the first elongate member having a male element and a second elongate member having the female element wherein the male and female elements are insertable together. More specifically, the “tubular pieces 11, 12 [as illustrated in Elrod] interlock to each other by action of an end of one tube, here illustrated to be rear piece 12, sliding into the open end of the other tube, here illustrated to be forward piece 11.” (Figures 2-3; Page 3, Paragraph 61, first sentence).

Therefore, Applicant submits that Elrod fails to disclose that the first elongate member has a male element comprising a tube disposed in radially spaced relation to the first elongate member and which is attached to the first elongate member as is recited in Amended Claim 1. Also,

Applicant submits that Elrod fails to disclose a second elongate member having a female element comprising a tube disposed in radially spaced relation to the second elongate member and being attached to the second elongate member as is also recited in Amended Claim 1. Applicant submits that Elrod fails to disclose each and every element as is recited in amended Claim 1 of the application such that the rejection thereof under §102(e) is believed to be overcome. The claims depending therefrom, namely Claims 1-5 and 9, are also believed to be allowable.

**Rejection of Claims 10-13 Under 35 U.S.C. §102(e)**

*Claims 10-13 were rejected under 35 U.S.C. §102(e) as being anticipated by Elrod.*

In the Office Action, the examiner indicates that “Elrod discloses a vehicle step comprising: (re: Claim 10) a first member having a first end comprising a male element; a second member having a second end comprising a female element; and wherein the first member and the second member are fixedly attached by positioning the male element within the female element.” (Office Action, Page 5).

For the reasons cited above in the remarks regarding the rejection of Claims 1-5 and 9 under 35 U.S.C. §102(e) in view of Elrod, Applicant submits that Claim 10, which is another version of Claim 1, is also overcome. More specifically, Elrod is understood by Applicant to disclose only the first and second members being fixedly attached together. Nowhere in Elrod is it shown or disclosed that the first member has a male element disposed in radially spaced relation to the first member, as is recited in amended Claim 10. Likewise, nowhere in Elrod is it shown or disclosed that the second member has a female element disposed in radially spaced relation to the second member, as is also recited in amended Claim 10. Therefore, Applicant submits that Elrod fails to disclose each and every element as recited in amended Claim 10 such that the rejection of Elrod under 35 U.S.C. §102(e) is believed to be overcome. The Claims depending therefrom, namely Claims 11, 12 and 13 are also believed to be patentable thereover as they are further limitations of Claim 10.

**Rejection of Claims 14-17 Under 35 U.S.C. §102(e)**

*Claims 14-17 were rejected under 35 U.S.C. §102(e) as being anticipated by Elrod or, in the alternative, under 35 U.S.C. §103(a) as being obvious over Elrod.*

In the Office Action, the Examiner indicates that “relative to Claims 10-13 the Elrod reference discloses the apparatus of a vehicle step in which the method of Claims 14-17 is considered inherent.” (Office Action, Page 5). The Examiner indicates that the “Elrod reference teaches the claimed method of 14-17 because the method is inherently disclosed. The rationale for this inherency is that the prior device of Elrod in its normal and usual application would necessarily require the claimed method for assembly and mounting under the disclosed step apparatus on a vehicle.” (Office Action, Page 5). The Examiner further indicates that “Even if not inherent, it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify the reference of Elrod to include the claimed method of Claims 14-17.” (Office Action, Page 6).

For the reasons discussed above with regard to the rejection of Claims 1-5 and 9 under 35 U.S.C. §1-2(e) as being anticipated by Elrod and the rejection of Claims 10-13 under 35 U.S.C. §102(e) as being anticipated by Elrod, Applicant submits that the rejection of Claims 14-17 under §102(e) is believed to be overcome as Claim 14 has been amended to be substantially similar to amended Claim 10. Claim 14, as amended, is therefore believed to be allowable over the cited and applied references. Claims 15-17, which are dependent upon Claim 14, are also believed to be allowable.

Regarding the rejection of Claims 14-17 under 103(a), Applicant submits that Claims 14-17 are patentable thereover. Contrary to the Examiner’s indication that the “prior art discloses all the structure necessary to perform the claim functions... and that one of ordinary skill in the art would find the claimed method to be an obvious step in light of the disclosed structures of the reference of Elrod,” Applicant submits that, as was indicated earlier, Elrod fails to disclose the first and second elongate members having male and female elements respectively which are insertable together to form the vehicle step. Therefore, Applicant submits that Elrod fails to disclose all the structure necessary to perform the claimed function of Claim 14. Therefore, the rejection of Claims 14-17 under §103(a) is believed to be overcome.

#### **Rejection of Claims 18-20 Under 35 U.S.C. §102(e)**

*Claims 18-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Elrod or, in the alternative, under 35 U.S.C. §103(a) as being obvious over Elrod.*

In the Office Action, the Examiner indicates that “relative to Claims 10-13 the reference of Elrod discloses the apparatus of a vehicle step in which the method of Claim 18 is considered inherent.” (Office Action, Page 6). The examiner further indicates that “The Elrod reference teaches the claimed method of Claim 18 because the method is inherently disclosed.” (Office Action, Page 6).

By this amendment, Applicant has deleted Claims 18-20 such that the rejection thereof under 35 U.S.C. §102(e) and under §103(a) are now moot.

#### **Objection to Claim 7**

*Claim 7 was objected to as being dependent upon a rejected base claim, but was indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.*

By this amendment, Applicant has amended Claim 7 to incorporate the limitations included in Claim 6 and Claim 1. Therefore, Claim 7 is now believed to be in allowable form.

#### **New Claims 21-25**

By this amendment, Applicant has added new Claim 21 which recites that the “male element is welded to the first elongate member and the female element is welded to the second elongate member”, as is disclosed in the specification as originally filed on Page 10, Paragraphs 29 and 30. Likewise, New Claim 22 is dependent upon Claim 1 and includes the recitation wherein “The male and female elements each comprises a tube, the male element being of a smaller diameter than that of the female element”, as is also disclosed in the Specification on Page 10, Paragraphs 29 and 30.

New Claim 23 is similar in scope to Claim 1, but is a narrower version thereof. More specifically, new Claim 23 includes a recitation of additional elements of a fastener and a fastener receiver which are provided to engage the male element with the female element to prevent relative movement therebetween. Such additional disclosure as recited in new Claim 23 is supported in the Specification as originally filed in Paragraphs 32-33 on Page 11.

New Claims 24 and 25 include additional elements of a cap and a band, respectively. Support for such additional elements is disclosed in the Specification in Paragraph 32 on Page 11 for the cap and in Paragraph 20 on Page 9 for the band.

### CONCLUSION

In view of the foregoing, the application is believed to be in condition for allowance. Entry of the amendments and issuance of a Notice of Allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the application, please contact Applicant's representative at the telephone number listed below.

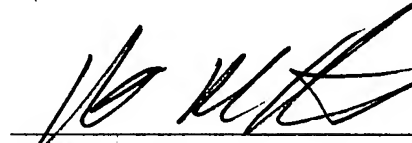
If any additional fee is due, please charge deposit account 19-4330.

Respectfully submitted,

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1/28/05

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